Govindaraji Rajaram & Ors v Wong Chew Fatt & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(NCVC) (W)-1885–11 OF 2015 AND W-02(NCVC) (W)-121–01 OF 2016

HAMID SULTAN, PRASAD ABRAHAM AND ASMABI MOHAMAD JJCA

23 MARCH 2017

Civil Procedure — Locus standi — Defamation action — Respondents filed action for defamation against appellants — Whether respondents had juridical capacity to file suit for defamation against appellants — Whether it could be said that defamatory statements found in impugned statement referred to respondents in their individual capacity or sting against Joint Management Committee

Tort — Defamation — Defamatory statements — Respondents filed action for defamation against appellants — Whether respondents had juridical capacity to file suit for defamation against appellants — Whether it could be said that defamatory statements found in impugned statement referred to respondents in their individual capacity or sting against Joint Management Committee

The respondents had brought an action against the appellants for defamation in which the trial court found in favour of the respondents. Aggrieved by the decision, the appellants filed the present appeals ie Appeal Nos W-02(NCVC)(W)-1885–11 of 2015 ('Appeal 1885') and W-02(NCVC)(W)-121–01 of 2016 ('Appeal 121'). The argument raised by the appellant was with regards to the juridical capacity of the respondents to sustain a suit for defamation. In relation to the argument, the question was whether it could be said that the defamatory statements found in the impugned statement ('the said statements') referred to the respondents in their individual capacity or the sting against the Joint Management Committee ('the JMC').

Held, allowing the appeals with costs of RM15,000 for each appeal; and setting aside the judgment of the High Court with agreed costs of RM20,000 for the appellants in Appeal 1885 and RM10,000 for appellant in Appeal 121:

(1) The JMC was a creature of statute having the legal capacity to sue and be sued. Thus, the only body that could be defamed was the JMC and not the individual members of the same. It was clear that the said statements referred to the collective actions of the JMC and not the individual respondents as it was related to the exercise of statutory duties of the

JMC. Therefore, a suit for defamation could not be sustained by the respondents save and except it was brought by the JMC (see paras 3–4 & 6).

[Bahasa Malaysia summary

Responden-responden telah memulakan tindakan terhadap perayu-perayu bagi fitnah di mana mahkamah perbicaraan mendapati memihak responden-responden. Tidak puas hati dengan keputusan tersebut, perayu-perayu memfailkan rayuan-rayuan ini iaitu Rayuan No W-02(NCVC)(W)-1885–11 Tahun 2015 ('Rayuan 1885') dan W-02(NCVC)(W)-121–01 Tahun 2016 ('Rayuan 121'). Hujahan yang dibangkitkan oleh perayu adalah berkaitan kapasiti juridikal responden-responden untuk mengekalkan tindakan untuk fitnah. Berkenaan hujahan tersebut, persoalan adalah sama ada ia boleh dikatakan bahawa pernyataan fitnah yang didapati di dalam pernyataan yang dipersoalkan ('pernyataan tersebut') merujuk kepada responden-responden dalam kapasiti persendirian mereka atau perletakan terhadap Jawatankuasa Pengurusan Bersama ('JPB').

Diputuskan, membenarkan rayuan-rayuan dengan kos sebanyak RM15,000 bagi setiap rayuan; dan mengetepikan penghakiman Mahkamah Tinggi dengan kos yang telah dipersetujui sebanyak RM20,000 bagi perayu-perayu dalam Rayuan 1885 dan RM10,000 bagi perayu dalam Rayuan 121:

(1) JPB adalah alat statut yang mempunyai kapasiti undang-undang untuk menyaman dan disaman. Oleh itu, satu-satunya badan yang boleh difitnahkan adalah JPB dan bukan ahli-ahli individunya. Adalah jelas bahawa pernyataan tersebut merujuk kepada tindakan kolektif JPB tersebut dan bukan responden-responden individu kerana ia adalah berkaitan kepada pelaksanaan tugas statutori JPB tersebut. Oleh itu, tindakan untuk fitnah tidak dapat dikekalkan oleh responden-responden kecuali ia dibawa oleh JPB (lihat perenggan 3–4 & 6).]

Notes

For a case on defamation action, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) para 6516.

For cases on defamatory statements, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 434–455.

Cases referred to

Amber Court Management Corp & Ors (suing in their capacity of council members of Amber Court Management Committee) v Hong Gan Gui & Anor [2016] 2 MLJ 85, CA (refd)

RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal [1996] 1 SLR 113, CA (refd)

Appeal from: Civil Suit No 23-NCVC-135–12 of 2012 (High Court, Kuala Lumpur)

Mohaji bin Selamat (Mohaji Hazury & Ismail) in Civil Appeal No W-02(NCVC)(W)-121–01 of 2016 for the appellant.

GK Ganesan (KN Geetha, Shalini Ragunath Yosodhaa Ganesan and AN Goh with him) (GK Ganesan) in Civil Appeal No W-02(NCVC)(W)-1885–11 of 2015 for the appellant.

T Gunaseelan (Alphone Manikam with him) (Gunaseelan & Assoc) in Civil Appeal Nos W-02(NCVC)(W)-1885–11 of 2015 and W-02(NCVC)(W)-121–01 of 2016 for the respondents.

Prasad Abraham JCA:

[1] We heard this appeal on 4 November 2016 and after having taken on board, the submissions of counsel and the various issues raised, we reserved our decision to be delivered today wherein we allow the said appeal and dismissed the respondent's suit against the appellant. For the purposes of this judgment, we shall refer to the parties as they were cited in the High Court.

MATERIAL FACTS

[2] We deal with the argument raised by the defendants with regard to the juridical capacity of the plaintiffs to sustain a suit for defamation, one of the pivotal grounds for this appeal.

[3] Can it be said that the defamatory statements found in the impugned statement refer to the plaintiffs in their individual capacity or the sting against the Joint Management Committee ('JMC'). The JMC is a creature of statute having the legal capacity to sue and be sued and so the only body that can be defamed is the JMC and not the individual members of the same.

[4] Perusing through the impugned letter and the statement of claim, to our mind, is clear that the defamatory statements in the impugned letter refer to the collective actions of the JMC and not the individual plaintiffs and it is therefore our view that a suit for defamation cannot be sustained by the plaintiffs save and except it is brought by the JMC and therefore on that ground alone the appeal should be allowed. It is evident that the impugned statement in this case clearly refers to the JMC and not the individual plaintiffs, as the impugned defamatory statement relate to the exercise statutory duties of the JMC (*Gatley* at para 8.18 footnote III).

[5] We refer to the Court of Appeal decision of *Amber Court Management Corp & Ors (suing in their capacity of council members of Amber Court*

Management Corp Management Committee) v Hong Gan Gui & Anor [2016] 2 MLJ 85 and we quote:

> (3) *The Act does not empower the council members of the management corporation with the legal capacity to institute actions in their own individual names or as council members of the management corporation. Since the council only acts on behalf of the management corporation and its powers are restricted to any of the powers of the management corporation, the second to the sixth plaintiffs had no locus to sue in defamation.* If the second and third plaintiffs were complaining that they had been defamed personally, then they ought to have rightfully brought separate proceedings in their individual capacities and not have it rolled up as being defamatory of the management corporation and all of the plaintiffs (see paras 40 & 43).

And at paras 41–43 of the same judgment:

> [41] Since the council only acts on behalf of the management corporation and its powers are restricted to any of the powers of the management corporation, the second to sixth plaintiffs have no locus to sue in defamation.
>
> [42] In any event if one were to examine the statement of claim at para 29 (the so termed 'First Attack') and para 31 (the so termed 'Second Attack') that set out the purported defamatory material, it will be noticed that none of the second to sixth plaintiffs are specifically mentioned or identified by the defendants in the impugned Facebook or email material; all references were to the management corporation as a whole or its proceedings.
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> [43] At para 33 of the statement of claim (the so termed 'Third Attack') only the names of the second and third plaintiffs are found in the alleged Facebook material. At para 34 however it is averred that '… the plaintiffs contend and will contend that the statement was issued with the intent to defame the plaintiffs …' meaning all the plaintiffs collectively as 'Ahli Jawatan Kuasa Amber Court Management Corporation Management Committee'.
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> In our view if the second and third plaintiffs were complaining that they had been defamed personally, then they ought to have rightfully brought separate proceedings in their individual capacities (apart from others) and not have it rolled up as being defamatory of the management corporation and all of the plaintiffs.

[6] We further quote the Singapore case of *RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal* [1996] 1 SLR 113:

> (2) The management corporation was competent to bring the action under s 33(2) of the Land Titles (Strata) Act, as it would have something akin to possession of the common property. Alternatively, the management corporation was entitled to bring the action on behalf of the subsidiary proprietors under s 116 of the Land Titles (Strata) Act: at [14], [15] and [16].

In this case, the plaintiffs' attack on defamation is based on an impugned letter relating to their exercise of the statutory duties and not an attack against the plaintiffs in their personal capacity. In our view therefore, the plaintiffs cannot sustain a claim for defamation.

A [7] In the light of our aforesaid finding, we would allow both appeals with agreed costs of RM15,000 for each appeal subject to the payment of allocator and deposit to be refunded. The judgment of the High Court is set aside and agreed costs of RM20,000 for the defendants in Appeal No W-02(NCVC)(W)-1885–11 of 2015 and RM10,000 for the second B defendant in Appeal No W-02(NCVC)(W)-121–01 of 2016.

Appeals allowed with costs of RM15,000 for each appeal; judgment of the High Court set aside with agreed costs of RM20,000 for appellants in Appeal 1885 and RM10,000 for appellant in Appeal 121.

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Reported by Dzulqarnain Ab Fatar

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